THE CANADIAN INDUSTRIAL DISPUTES ACT—DISCUSSION.

O. D. SKELTON: Professor Shortt's admirable paper leaves little to be said on the working of the act which he has done so much to make a success. I wish mainly to emphasize a few of the points suggested.

It is one of the chief merits of the Canadian measure that it aims merely to supplement collective bargaining, not to take its place. There is no desire, and so far no tendency, to make state regulation of the terms of industry, as in Australasia, the normal procedure. Collective bargaining is assumed as the regular and organic instrument of industrial peace; only when negotiations break down, and paralysis of one of the pivotal public utilities of the country is threatened, does the government step in and insist that a further attempt at settlement must be made, under the guidance of a board entrusted with the double function of making each side realize the other's position, and of informing and focusing public opinion on the dispute.

The conduct of the boards referred to by Professor Shortt is characterized by informality in procedure and by the endeavor to secure the assent of both parties to a basis of agreement before announcing decision. It is to be noted, however, that this course is not the invariable one. Several boards appointed under the act have assimilated their procedure to that of courts of law, and have contented themselves, court-wise, with delivering a judgment on the merits of the case, without further attempt

at securing agreement. The difference illustrates the all-importance of the personnel of the boards.

It is interesting, in view of yesterday's discussion, to note that in effecting a settlement no recourse seems to have been had to the marginal productivity theory of the schools or to any other single abstract principle. The condition of trade in general, the financial position of the company involved, the state of the labor market, the strength of the union organization, changes in the cost of living, are among the factors given weight. This means oftentimes compromise, but it does not, as is sometimes charged, involve splitting the difference: there is a world of distinction between compromising in view of real factors of strength on both sides and splitting the difference between artificial demands.

The framers of the act relied on the power of an informed public opinion to procure the acceptance of awards. Where the issues at stake were important enough to attract wide attention their trust has been justified. Even in such a case of seeming failure as the rejection by the Canadian Pacific Railway machinists of the board's award, followed by a strike of 8000 men, it was very largely the unwonted and almost unanimous support of public and press—the men complained that only three newspapers in all Canada gave them aid—which enabled the company to persist with a crippled service and to import strike breakers by hundreds from Great Britain and thus end the strike. Public opinion plays a further rôle, not at first assigned to it. The act provides penalties of fine and imprisonment for failure to submit a dispute to investigation before declaring a strike or lockout. It still remains to be proved, however, that these provisions, especially the imprisonment penalty, could be or should be enforced in the teeth of widespread and determined

resistance. The real sanction is the fear of public disfavor.

Labor organizations have been by no means unanimous in their attitude toward the act. The Trades and Labor Congress has twice approved the principle involved. The railway unions, more immediately concerned than many of the trades represented in the Congress, opposed the measure at its introduction, and still oppose it, though less irreconcilably. Among the out-and-out opponents of the act suggestions range from the complete abolition of its anti-strike provisions, as ably argued by Mr. David Campbell, of the Railway Telegraphers, to the somewhat paradoxical conclusion of Mr. J. H. McVety, of the International Machinists, that the act should be extended to cover all industries, acceptance of awards made compulsory, and boards elected by popular vote for a four-year term. More moderate critics, however, recognizing the improbability of such radical action, are directing their efforts toward securing the adoption of certain amendments, which will be laid before the Dominion government during the coming session of Parliament. It is impossible to forecast the exact scope of the demands to be made; among the specific suggestions recently made, however, there may be noted the following: the prohibition of the importation of strike breakers into the locality while the investigation is pending—a demand in harmony with the spirit of the act, and fair in view of the handicap the men are under through being deprived of their strongest weapon, the power of sudden action; extension of the Alien Labor law to include Great Britain — a demand likely to incur much opposition on political grounds; elimination of the provision that none but British subjects are eligible to act as members of boards—a provision which is a play to the gallery quite out of

keeping with the realities of international unionism; and an amendment permitting officials of a union to declare that a strike is likely to occur if the act is not invoked, without going to the trouble and expense at present imposed by the necessity of taking a vote of the members before making the declaration. At its Halifax convention in September the Trades and Labor Congress instructed its executive, in the event of the government refusing to grant the amendments desired, to submit a referendum on the advisability of repealing the act, to the trades affected, and pledged itself to abide by the result of the vote.

VICTOR S. CLARK: Professor Shortt reveals his experience in the field of arbitration by laying main stress in his paper on methods of administration rather than on the machinery of the Canadian act. For the main thing is the personnel of the boards and the way they interpret their duties—the success of the law depends upon the tact and fairness of the persons who operate it. Practically, the machinery in itself is a subordinate thing.

I do not think that public opinion alone will prevent strikes, though it may lessen their number and mitigate their evils. In New Zealand and Australia strikes are prohibited by law, investigated by public tribunals, and the merits of every dispute are brought fully before the bar of public opinion. That is, the sanction is public opinion backed by fines and imprisonment. But within two years there have been in New Zealand several important strikes in violation of the compulsory arbitration act; and serious strikes have occurred in Australia in defiance of similar laws. The recent tram strike in Auckland, the largest city of the former colony, was a strike about as big and inconvenient for the public as could have hap-

pened in connection with a private enterprise, and it was settled by a special commission outside the arbitration act. The tram strike in Sydney, at nearly the same time, took a similar course. In neither case did public opinion play any appreciable part in preventing an open rupture between employers and employees. Therefore I do not look forward with very sanguine expectation to seeing the Canadian law prevent strikes through public opinion alone. The great value of the act—and its value is great—lies in its providing a negotiating rather than an arbitrating body, and in thus preventing strikes by bringing the parties to a voluntary settlement, and not by holding over them any sort of a club in the shape of a penalty—moral or otherwise—for striking.

The stronger unions in Canada, directly affected by the law, are not favorable to its present provisions. This applies especially to the railway unions and the Western Federation of Miners. On the other hand, weaker unions regard the intervention of the government favorably. My impression is that the rank and file of the workers like the law better than do the leaders of the organizations. At least my personal interviews with the men pointed that way. If a locomotive engineer or fireman, met on a railway platform, knew anything definite of the act, he spoke of it at least without hostility, and often in a friendly attitude; but all the general officers of the engineers' and firemen's unions seemed clearly opposed to the law.

A chief argument against the Canadian procedure, on the part of well organized workingmen, is that it delays a settlement until the condition of the labor market has changed. The labor leaders say that, when free to strike on the moment, they can negotiate an agreement with their employers determining wages for some time to

come, on the crest of the market,—when the demand for labor is most active and wages are highest. But if they must delay in order to negotiate before striking, as the present law requires, their settlement is likely to be based on the state of the labor market at some date a month or two months later, when conditions are more favorable to employers. They ask pertinently enough whether, assuming labor to be in a market sense a commodity, the seller of any other commodity, like wheat or provisions or coal or pig iron, would care to submit to prices prepared for him some weeks after the time *he* thought most favorable for selling.

I intended to underline several paragraphs of Professor Shortt's paper, but Professor Skelton has anticipated my comments. The Canadian law has up to the present promised better than any other law to prevent strikes. It does not touch—as do the Australasian statutes—the equally important question of sweating. We shall see—in fact we already do see—the latter acts turning more and more to remedying the ill condition of underpaid women and children, wage boards being substituted for arbitration courts; but, because this is less spectacular than stopping great industrial conflicts, it is sometimes regarded as a minor function—when it truly is a major function—of Australasian legislation. Into this field the Canadian law does not pretend to enter, but in its own peculiar field it gives most promising results.